

CLIENT ALERT

This Month in International Trade - June 2013

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THIS MONTH'S TOP FIVE DEVELOPMENTS

1) New Iran Sanctions Target Financial, Energy, Insurance, Shipping, and Automotive Sectors

On June 3, President Obama signed a new Executive Order 13645 (EO) which implemented certain additional sanctions authorized by the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) which was signed into law as part of the National Defense Authorization Act of 2013 in early January 2013. The full Executive Order can be found [here](#) and additional guidance provided by the Department of State [here](#).

The IFCA and the Executive Order contain numerous new requirements, particularly for financial institutions and other entities outside the United States. The following are a few of the key provisions:

- Foreign Financial Institutions – Foreign financial institutions (FFIs) are prohibited from knowingly conducting or facilitating several types of transactions including:
 - **Transactions with SDNs** – FFIs are prohibited from conducting or facilitating "significant" financial transactions on behalf of any Iranian individual designated by OFAC as well as any other individual designated by OFAC under the "IRAN" program. OFAC's determination of what transactions are "significant" is fact-specific, but will focus on the size, number, type, and complexity of the transactions, the level of awareness of the company's management, the impact on sanctions program objections, and other relevant factors. Certain limited exceptions apply.
 - **Transactions in the Rial** – The EO also explicitly target the Iranian currency for the first time and now prohibits FFIs from (1) conducting or facilitating the purchase or sale of Iranian rials or derivatives, swaps, futures, forwards or other contracts whose value is based on the exchange rate of the rial or (2) maintaining "significant" funds and accounts outside of Iran that are denominated in rials.
 - **Transactions with the Iranian Automotive Sector** – The EO also prohibits FFIs from conducting or facilitating the sale, supply or transfer to Iran of goods and services in connection with the Iranian automotive sector. The automotive sector is defined broadly to include the manufacturing or assembling in Iran of most forms of automobiles as well as the provision of after-market parts.
- Energy, Shipping, and Shipbuilding Sectors – The IFCA and the EO also expand existing sanctions under the Iran Sanctions Act that target petroleum transactions to now also include the provision of goods or services to the energy (i.e., petroleum, natural gas, or petroleum products) shipping (i.e. any activity involving the transportation of goods by ship or involving Iranian-flagged vessels) or the shipbuilding (i.e. all construction of seagoing vessels) sectors in Iran. The EO provides certain examples of newly prohibited goods and services, including:

- **Energy:** goods or services that contribute to allow development of domestic petroleum; maintenance or expansion of domestic petroleum production; and import/import of petroleum or petroleum products
 - **Shipping:** The provision of tankers; the provision of registry, flagging or classification services; the supervision of repairs; inspection, testing and certification of marine equipment; carrying out of surveys and/or issuing of certificates or compliance documents to ships or shipping; or any other goods or services relating to maintenance, supply, bunkering and docking of Iranian vessels. Bunkering services provided to non-Iranian vessels carrying non-blocked property to/from Iran are exempted; and
 - **Shipbuilding:** The building/refit of vessels; the provision of marine engines, turbines, propellers, compasses or other navigation equipment; or the provision of other technical assistance, training or financing for the building, maintenance or refitting of vessels.
- Provision of Graphite, Raw or Semi-Finished Metals, and Precious Metals – The IFCA prohibits the provision of graphite, raw or semi-finished metals, including steels, aluminum, titanium, nickel, plutonium, tungsten, zirconium and others, and coal. It also prohibits the provision of "precious metals" including silver, gold, platinum, palladium, rhodium, ruthenium, iridium and osmium, amongst others.

The Executive Order took effect on July 1, 2013.

For more information, contact: Cari Stinebower, Dj Wolff, Richard Massony, Michael Larmoyeux

2) U.S.-EU Free Trade Initiative Hits a Green Light

As expected, President Obama and his EU counterparts formally announced the launch of negotiations for a Transatlantic Trade and Investment Partnership (TTIP) on the margins of June G8 Summit in Northern Ireland. The announcement paved the way for a first, largely organizational round of working level negotiations in early July. The launch of the TTIP followed a degree of internal EU drama, as France fought successfully against other EU Member States to effectively exempt audio-visual services from the initial scope of what is otherwise expected to be a comprehensive free trade effort. Following the build-up of more than a year of preparatory work, the launch of negotiations creates tangible opportunities for companies and associations to advance their specific objectives for addressing tariff and non-tariff barriers in Transatlantic trade. Crowell and its trade consulting affiliate C&M International stand ready to provide advice on the process, the surrounding political and economic dynamics, and strategies for effective engagement.

For more information, contact: Josh Kallmer, Christopher Wilson

3) State, OFAC Update Syria Sanctions Policy, Easing Sanctions for Syrian Opposition

On June 12, the Departments of State and Treasury acted to ease economic sanctions against Syria to enable certain activities for the benefit of the Syrian opposition.

The State Department issued a limited waiver of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 in order to authorize the limited export and re-export of certain goods of U.S. origin to opposition-controlled areas of Syria. Under

the waiver, the Department of Commerce may authorize exports of commodities, software and technology that will address the needs of the Syrian people in areas like agriculture, oil and gas production, and transportation.

OFAC issued a [Statement of Licensing Policy](#) inviting U.S. persons to apply for specific licenses to authorize transactions in the Syrian telecommunications sector, agricultural sector and petroleum and petroleum products sector. OFAC also issued [General License 11A](#) for Syria to authorize the export of services and the transfer of funds in support of the preservation of Syria's cultural heritage.

For more information, contact: Cari Stinebower, Richard Massony, Dj Wolff

4) All Ten CBP CEEs Open for Business

On June 3, U.S. Customs and Border Protection (CBP) announced the opening of the final three Centers of Excellence and Expertise (CEE): Agriculture & Prepared Products (Miami, FL); Apparel, Footwear & Textiles (San Francisco, CA) and Consumer Products & Mass Merchandising (Atlanta, GA).

The new CEEs join the seven Centers already in operation: Automotive & Aerospace (Detroit, MI); Base Metals (Chicago, IL); Electronics (Los Angeles, CA); Industrial & Manufacturing Materials (Buffalo, NY); Machinery (Laredo, TX); Petroleum, Natural Gas & Minerals (Houston, TX); and Pharmaceuticals, Health & Chemicals (New York, NY). With all ten planned Centers up and running, CBP moves into a new era of consolidated post-entry review and virtual coordination of staff expertise to allow for account-based management of importer activity.

For more information, contact: John Brew, Michael Larmoyeux

5) The Office of Antiboycott Compliance Issues Its Two Largest Fines in Years

In the last three months, the U.S. Commerce Department's Office of Antiboycott Compliance (OAC) has issued two settlements involving two of its largest penalties ever - \$182,325 and \$52,380, for alleged violations of the Commerce Department's Antiboycott regulations:

- Baker Eastern, SA (June 12, 2013) - Baker Eastern, SA (Libya), a controlled foreign subsidiary of Baker Hughes Incorporated, a U.S. company, paid \$182,325 to settle allegations of 66 violations of the antiboycott regulations all involving Libya: on 22 occasions, Baker Eastern provided a certificate of origin indicating it would "act in compliance" with the Arab boycott of Israel, while on 44 occasions, Baker Eastern provided documents with [prohibited boycott-related language](#).
- BAC Florida Bank (April 2013) - BAC Florida Bank (BAC) paid \$52,380 to settle allegations of 16 violations of the antiboycott regulations. All 16 allegations were allegedly the result of [furnishing prohibited information](#) in transactions from the United States to Oman, Syria, Dubai, and Lebanon.

For U.S. companies, these settlements are noteworthy because of OAC's demonstrated willingness to impose increased fines, target foreign subsidiaries, and identify multiple violations in a single transactions. These all underscore the need for U.S.

companies to maintain active due diligence programs to verify compliance with U.S. antiboycott regulations, not only in the United States, but throughout their global business operations.

For more information, contact: Dj Wolff, Jeff Snyder

THIS MONTH IN TRADE – OTHER NEWS

Agency Enforcement Actions

Bureau of Industry and Security (BIS)

- Ten Men Sentenced to Prison for Unlawfully Exporting Firearms, Accessories to Mexico. Ten men were fined \$100 each and sentenced to prison terms ranging from three to six years for unlawfully exporting various firearms and accessories on the U.S. Munitions List (USML) to Mexico without a license.

Consumer Products Safety Commission (CPSC)

- President of Florida Company Sentenced to 22 Months in Prison Smuggling Banned Children's Products.

Customs and Border Protection (CBP)

- CBP Prepares for Liquidated Damages Phase of ISF Enforcement Process.

Department of Justice (DOJ)

- Chinese National Pleads Guilty to Attempting to Export Weapons Grade Carbon Fiber to China.

Office of Foreign Assets Control (OFAC)

- ATP Tour Settles for \$48,000 for Salary Payments to Iranian Tennis Official. The ATP Tour, a non-profit that organizes professional tennis tournaments, allegedly made salary payments to an Iranian individual for officiating services rendered. ATP Tour did not voluntarily disclose these violations, but OFAC found that the violations were not egregious. ATP Tour settled with OFAC for \$48,600.

Securities and Exchange Commission (SEC)

- Total S.A. Settles for \$398 Million for Alleged Bribes to Iranian Official. Total S.A. allegedly paid \$60 million in bribes to an Iranian government official in order to obtain contracts to develop oil and gas fields in Iran. In an administrative settlement with the SEC, Iran agreed to disgorge \$153 million in illicit profits and to pay a penalty of \$245.2 million. In addition to the penalty, Total S.A. must retain an independent compliance consultant to review its FCPA compliance.

State Department

- June 12, 2013 – State Department Sanctions Three Companies for Violations of Iran Sanctions Act.

For more information, contact: Richard Massony

EU Hits Chinese Solar Panels with Anti-dumping Duties

On June 4, 2013, [Commission Regulation 513/2013](#) imposed a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules, cells and wafers originating in or consigned from China and falling under CN codes ex 3818 00 10, ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90.

The provisional anti-dumping duty is based on the injury margin found by the Commission during the investigation. Measures will be phased in gradually; until August 5, 2013, the provisional anti-dumping duty will be set at 11.8 percent, thereafter at 47.6 percent. The provisional dumping found was 88 percent.

The deadline for imposing definitive measures is December 5, 2013. The EU and China are currently working towards a settlement that could take the form of a price undertaking applicable for a certain volume of imports, with the full measures applying to imports above that volume.

Shortly after the imposition of the provisional anti-dumping measures, China launched an investigation into EU wine that mainly targets France, Spain and Italy, the EU's biggest wine exporters into China and supporters of the provisional measures on imports of solar panels from China.

Last year, the U.S. had imposed anti-dumping tariffs of up to 250 percent on Chinese solar panels.

For more information, contact: Laurent Ruessmann, Jochen Beck, Francesca Condello

EU Import Controls On Food From Japan

Following the accident at the Fukushima nuclear power station in March 2011, radionuclide levels in certain food products originating in Japan have been found to exceed the admitted level for import into the EU, representing a threat to human and animal health. Therefore, the EU has imposed special safety requirements on the import of feed and food originating in or consigned from Japan since 2011. These measures were recently reviewed by [Commission Implementing Regulation 495/2013](#). Pears, taro, yacon, pome fruit, pawpaw and scallops were removed from the list of products for which sampling and analysis is required before import and buckwheat, fresh bovine meat, lotus root and threeleaf arrowroot were included in the list.

For more information, contact: Laurent Ruessmann, Jochen Beck, Francesca Condello

EU Modernized Customs Code Postponement

With Regulation [528/2013](#) the EU postponed the entering into force of the Modernized Customs Code (Regulation [450/2008](#)) from June 24, 2013 to November 1, 2013. The additional time is required for the European Parliament and the Council to adopt a recast that was proposed by the Commission in February 2012.

For more information, contact: Laurent Ruessmann, Jochen Beck, Francesca Condello

ECJ rules that parties have an interest in annulment of sanctions also after their delisting

On May 28, 2013 and June 6, 2013 in Cases [C-239/12](#) and [C-183/12](#), the EU Court of Justice (ECJ) set aside the orders of the General Court in Cases [T-127/09 *Abdulrahim v Council and Commission*](#) and [T-527/09 *Ayadi v Commission*](#) and referred the cases back to the General Court. The latter had ruled that there was no longer a need to adjudicate on their actions for annulment given the removal of the applicants from the respective sanction lists. On appeal, the ECJ set aside the General Court's orders finding that the appellants would have a continued interest in bringing proceedings for the annulment of the measures for the period of their listing and, should their actions be upheld, in securing their rehabilitation and reparation for the non-material harm suffered.

For more information, contact: Laurent Ruessmann, Jochen Beck, Francesca Condello

EU Commission to Terminate Anti-Circumvention investigation of imports of aluminum foil from China

The European Commission will shortly terminate an anti-circumvention investigation concerning imports of certain aluminum foils originating in China. The case was initiated by Commission Regulation [973/2012](#) in October 2012, following a complaint by the EU industry that Chinese exporting producers had altered their products to avoid payment of the anti-dumping duties imposed by Council Regulation [925/2009](#).

For more information, contact: Laurent Ruessmann, Jochen Beck, Francesca Condello

CROWELL AND MORING SPEAKS

Jini Koh moderated a panel on "Regional Insight: Russia" at the Annual American Association of Exporters and Importers (AAEI) Conference in Washington, D.C. on June 17, 2013.

Jonathan S. ("Josh") Kallmer and **Laurent Ruessmann** presented "A Comparison of Free Trade Agreements and a Window on the Transatlantic Trade and Investment Partnership" at the International Compliance Professionals Association (ICPA) EU Conference 2013 in Dublin, Ireland, on June 25, 2013.

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